

APRIL 11, 2007

THIS CLAIM REPRESENTS PRINCIPAL FUNDS PAID BY THE BORROWER THAT SHOULD HAVE BEEN REMITTED TO THE INVESTOR, BUT IN FACT WERE DIVERTED BY USA COMMERCIAL MORTGAGE CO. INTO THEIR OWN ACCOUNTS. CONSEQUENTLY, THIS CLAIM SHOULD BE A SECURED CLAIM AND BE PAID FROM THE BANKRUPTCY ESTATE.

THIS IS A TRUE STATEMENT AND HAS BEEN SUPPORTED BY STATEMENTS SENT TO ME BY USACM.

SINCERELY,


JACK S. TIANO

06-10725-1bn

4-26-07

9:30



USA Commercial Mortgage Company

Investor History Report

Vesting: Jack S. Tiano, Trustee for An Accountancy Corporation Profit Sharing Plan & Trust dated 02/28/1997

Loan: Oak Shores II

Client ID: 7287

Account ID: 7460

Loan Interest Rate: 13.00%

Original Service Fee: 1.00%

Current Service Fee: 1.00%

Date	Transaction	A	B	C	D = B - C	E	F	G	H	I = F - G - H	J	K = H - J
		Investment	Principal Paid by Borrower	Principal Paid to Investor	Principal Owed to Investor	Unsecured / Diverted Principal	Interest Earned	Loan Service Fee Retained by USACM	Interest Paid by Borrower Net of Service Fee	Cumulative Amount Due from Borrower Net of Service Fee	Interest Paid to Investor	Cumulative Amount Held for / (Due from) Investor
11/01/2006	-PRIOR MONTH ENDING BALANCES-	\$39,966.56	\$10,033.44			\$10,033.44	\$4,668.95	\$351.87	\$2,450.47	\$1,866.60	\$2,450.47	\$0.00
11/30/2006	Interest and Service Fee (11/1 - 11/30)	\$39,966.56				\$10,033.44	\$454.80	\$33.31		\$2,288.10		
TOTALS:		\$39,966.56	\$10,033.44	\$0.00	\$0.00	\$10,033.44	\$5,123.75	\$385.17	\$2,450.47	\$2,288.10	\$2,450.47	\$0.00

¹ This rate may be adjusted according to your loan servicing agreement.

This statement is provided for informational purposes only and is intended for the sole benefit of the named vested party. This statement is not intended to represent a loan payoff quote. USA reserves the right to update and supplement this statement.

TIANO, JACK
116 W EL PORTAL
STE 103
SAN CLEMENTE, CA 92672

**PLEASE NOTE THAT THE DEBTOR IS OBJECTING TO THE CLAIM THAT YOU FILED.
PLEASE REVIEW THE NOTICE AND OBJECTION FOR DEADLINES TO RESPOND.**

Cover Sheet

USA COMMERCIAL MORTGAGE COMPANY

Claims Asserting Secured Status - Reclassify as General Unsecured Claims

<u>Claimant</u>	<u>Case Number</u>	<u>Proof of Claim Number</u>	<u>Date Filed</u>	<u>Proof of Claim Amount</u>	<u>Proof of Claim Priority</u>
TIANO, JACK 116 W EL PORTAL STE 103 SAN CLEMENTE, CA 92672	06-10725	10725-00391	10/2/2006	\$10,574.00	S

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E-Filed on 3/20/07

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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,

USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-
06-10725 LBR

**AMENDED NOTICE OF HEARING
REGARDING FOURTEENTH
OMNIBUS OBJECTION OF USA
COMMERCIAL MORTGAGE
COMPANY TO CLAIMS ASSERTING
SECURED STATUS**

Hearing Date: April 26, 2007
Hearing Time: 9:30 a.m.

THE USACM LIQUIDATING TRUST IS OBJECTING TO THE CLAIM THAT
YOU FILED. THIS IS NOT AN OBJECTION TO YOUR STATUS OR CLAIM AS
A DIRECT LENDER, OR TO THE SECURITY INTEREST YOU AS A DIRECT
LENDER HAVE IN YOUR BORROWERS' PROPERTY AS COLLATERAL.
RATHER, IT ARGUES THAT YOUR CLAIM IS NOT SECURED BY PROPERTY
OF THE BANKRUPTCY ESTATE, WHICH DOES NOT INCLUDE THE
BORROWERS' PROPERTY. THE DEADLINE TO RESPOND TO THE

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1 claims, but reserves the right to do so. This Objection is supported by the Court's record
2 and explained in the following Memorandum.

3 **I. JURISDICTION**

4 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334
5 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
6 proceeding under 28 U.S.C. § 157(b)(2)(B).

7 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502
8 and Bankruptcy Rule 3007.

9 **II. BACKGROUND**

10 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA
11 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital
12 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC
13 ("FTDF" and together with DTDF, the "Funds") (collectively the "Debtors"), filed
14 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors
15 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections
16 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was
17 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
18 ("Mesirow"), who serves as the Chief Restructuring Officer.

19 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the
20 business of underwriting, originating, brokering, funding and servicing commercial loans
21 primarily secured by real estate, both on behalf of investors and for its own account.
22

23 3. This business included the solicitation of individual investors to purchase
24 fractional interest in loans that USACM originated and then serviced. These investors,
25 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in
26 USACM's bankruptcy case and in this Objection.

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1 **SCHEDULING EVIDENTIARY HEARINGS ONLY. NO ARGUMENTS WILL BE**
2 **HEARD ON THAT DATE.**

3 **NOTICE IS FURTHER GIVEN** that any response to the Objection must be filed
4 by **April 19, 2007** pursuant to Local Rule 3007(b), which states:

5 If an objection to a claim is opposed, a written response must be filed and
6 served on the objecting party at least 5 business days before the scheduled
7 hearing. A response is deemed sufficient if it states that written
8 documentation in support of the proof of claim has already been provided to
the objecting party and that the documentation will be provided at any
evidentiary hearing or trial on the matter.

9 If you object to the relief requested, you *must* file a **WRITTEN** response to this
10 pleading with the Court. You *must* also serve your written response on the person who
11 sent you this notice.

12 If you do not file a written response with the Court, or if you do not serve your
13 written response on the person who sent you this notice, then:

- 14 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
15 • The Court may *rule against you* without formally calling the matter at the
16 hearing.

17 Dated: March 20, 2007.

18 **LEWIS AND ROCA LLP**

19 By: /s/ RC (#6593)

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
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☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
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Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**FOURTEENTH OMNIBUS OBJECTION OF
THE USACM LIQUIDATING TRUST TO
CLAIMS ASSERTING SECURED STATUS**

Hearing Date: April 26, 2007
Hearing Time: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") hereby files its Fourteenth Omnibus Objection to Claims Asserting Secured Status ("Objection") and moves this Court, pursuant to § 502 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing approximately 1,600 alleged Secured Claims asserting Claims against USA Commercial Mortgage Company ("USACM") that aggregate over \$296 million. The USACM Trust is not, by this filing, objecting at this time to any of the claims as unsecured

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1 **OBJECTION IS APRIL 19, 2007. PLEASE DO NOT CONTACT THE CLERK OF**
2 **THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF YOUR CLAIM.**
3 **QUESTIONS REGARDING THE AMOUNT OF A CLAIM OR THE FILING OF A**
4 **CLAIM SHOULD BE DIRECTED TO BMC GROUP AT 888-909-0100, OR**
5 **WWW.BMCGROUP.COM/USACMC, or to the undersigned counsel.**

6 **NOTICE IS HEREBY GIVEN** that the USACM Liquidating Trust, by and
7 through its counsel, has filed a Fourteenth Omnibus Objection to Claims Asserting
8 Secured Status (the "Objection"). The USACM Liquidating Trust has requested that this
9 Court enter an order, pursuant to section 502 of title 11 of the United States Code (the
10 "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the
11 "Bankruptcy Rules"), disallowing the secured creditor status of approximately 1,600
12 alleged secured claims asserting claims that aggregate over \$296 million.

13 Specifically, the USACM Liquidating Trust does not object to these claims being
14 Direct Lender claims. Rather, the Trust objects to the secured status asserted in the proofs
15 of claim listed on the Exhibit A to the Objection, which is served with this Notice. The
16 objection asserts that the listed claims are not secured by property of the USACM estate,
17 although the loans that are the basis of the claims may be secured by property of the loan
18 Borrowers. The Trust requests that the Court reclassify these claims as general unsecured
19 claims (subject to additional objections). As explained in the motion, the USACM
20 Liquidating Trust may have other objections to the claims that will be filed later.

21 **NOTICE IS FURTHER GIVEN** that the hearing on the Objection will be held
22 before the Honorable Linda B. Riegle, United States Bankruptcy Judge, in the Foley
23 Federal Building, 300 Las Vegas Boulevard South, Courtroom 1, Las Vegas, Nevada, on
24 **April 26, 2007, at the hour of 9:30 a.m.**

25 **NOTICE IS FURTHER GIVEN THAT THE HEARING SET ON APRIL 26,**
26 **2007, WILL BE HELD FOR THE PURPOSE OF STATUS CHECKS AND**

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1 4. Although USACM serviced and sometimes originated the loans in which the
2 Direct Lenders invested, USACM was not a borrower on these loans.

3 5. On September 14, 2006, the Court entered its Order Setting Deadline to File
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as
6 the deadline ("Bar Date") for creditors to file proof of claims.

7 6. On September 25, 2006, the Debtors served a copy of the Bar Date Order on
8 their service lists [Docket No. 1358]. All Direct Lenders were served with a copy of the
9 Bar Date order as well [Docket No. 1358].

10 7. On November 6, 2006, a stipulation was filed and an order entered extending
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket
12 No. 1729].

13 8. On January 8, 2007, this Court entered its Order Confirming the "Debtors'
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15 9. Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan")
16 [Docket No. 1799] provides the following deadlines for objections to Claims:

17 (A) for any and all Claims and Equity Interests to which the
18 General Bar Date applies, ninety (90) days after the Effective Date; (B) for
19 any and all Claims to which the Administrative Claims Bar Date or the
20 Professionals Administrative Bar Date applies, thirty (30) days after the
21 expiration of the respective Bar Date; and (C) for any and all Claims to
22 which the Bar Date applicable under section B.3 of Art. V of the Plan
23 applies, thirty (30) days after the expiration of that Bar Date.

24 10. USACM's claims and noticing agent received approximately 2,436 proofs of
25 claim as of the January 13, 2007 Bar Date, asserting claims totaling more than
26 \$997,000,000, plus unknown amounts based on unliquidated Claims.

 11. Under the Plan, the USACM Trust is the successor to USACM with respect
to standing to seek allowance and disallowance of Claims.

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1 The USACM Trust objects to these claims on the basis that these Claims are not secured
2 by property of the USACM estate, although they may well be secured by property owned
3 by their Borrowers. Secured claims are claims "by creditors against the estate that are
4 secured by a lien on property in which the estate has an interest." *United States v. Ron*
5 *Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). None of the Claims listed on Exhibit A are
6 secured by such a lien, and the claimants have offered no evidence in support of their
7 contention. Thus none of these claims are entitled to secured status in this bankruptcy
8 case, and should be classified as general unsecured Claims, subject to further objection.
9

10 V. CONCLUSION

11 For the reasons discussed above, the USACM Trust objects to the secured status
12 asserted in the proofs of claim listed on Exhibit A attached to this Objection and requests
13 that the Court reclassify these claims as general unsecured Claims (albeit subject to
14 possible additional objections). The USACM Trust also requests such other and further
15 relief as is just and proper.

16 Dated: March 20, 2007.

17 LEWIS AND ROCA LLP

19 By: /s/ RC (#6593)

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